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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

No. 504

SCRIPTURE PRESS FOUNDATION, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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October 17, 1961

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above-entitled case on January 18, 1961, as amended July 19, 1961.

### CITATION TO OPINION BELOW

The opinion of the Court of Claims rendered on January 18, 1961, is reported at 285 F. 2d 800 and is reprinted as an appendix hereto. Also reprinted in the appendix, but not reported, are the findings of fact and conclusion of law of the Court of Claims.

## JURISDICTION

The judgment of the Court of Claims was entered on January 18, 1961. A timely motion for rehearing and reconsideration was denied on July 19, 1961. This petition for a writ of certiorari is filed less than ninety days after the denial of rehearing and reconsideration. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255 (1).

## QUESTION PRESENTED

Whether, under § 101(6) of the Internal Revenue Code of 1939 and § 501(c)(3) of the Internal Revenue Code of 1954, the proper standard for determining a non-profit religious publishing organization's tax exempt status as a religious or educational corporation, where none of its activities competes with those of ordinary commercial concerns, is (1) the substantiality or primacy of its religious publication sales, or (2) the religious and educational purposes to which its profits and activities are exclusively devoted and destined.

## STATUTES INVOLVED

Section 101(6) of the Internal Revenue Code of 1939, 53 Stat. 33, 26 U.S.C. § 101(6) (1952 ed.), as amended by § 301(c)(1), Revenue Act of 1950, 64 Stat. 906, and by § 314(b)(1), Revenue Act of 1951, 65 Stat. 452, 492, reads as follows:

> EXEMPTIONS FROM TAX ON CORPORATIONS
>
> Except as provided in paragraph (12)(B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—
>
> * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814; * * *

The successor to § 101(6) of the Internal Revenue Code of 1939 is § 501(c)(3) of the Internal Revenue Code of 1954, 68A Stat. 163, reading as follows:

(c) LIST OF EXEMPT ORGANIZATIONS.—

* * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

## STATEMENT OF THE CASE

Petitioner, claiming it was exempt from federal corporate income taxes by virtue of its religious and educational nature, filed this suit in the Court of Claims

for the recovery of taxes paid for the taxable year ending January 31, 1953. The amended complaint sought recovery in the amount of $159,588.18, including interest paid, plus interest thereon. The pertinent facts developed at the trial, as found by the Trial Commissioner and accepted by the Court of Claims, may be summarized as follows:

(1) Petitioner was organized in 1945 as a nonprofit, nonstock corporation under the laws of Illinois. It is devoted to religious educational purposes or objects, although independent of any particular religious denomination or church. It was the successor of a corporation known as Scripture Press, Inc., a profit corporation organized under Illinois law. In 1945 the stock of the latter corporation had been donated by its stockholders to the petitioner corporation, and Scripture Press, Inc., was then liquidated into petitioner.

(2) In 1946, based on a review of pertinent facts and data—including financial statements, publications, and the fact that petitioner's predecessor was a profit corporation—the Commissioner of Internal Revenue ruled that petitioner was *"organized and operated exclusively for religious purposes"* and hence was exempt from federal income taxes under § 101(6) of the 1939 Internal Revenue Code. This ruling was retroactive to the time when petitioner was incorporated in 1945.

(3) Petitioner was organized primarily by a husband and wife, Victor and Bernice Cory, who "had been and have remained firm in their religious belief and conviction that they had a Christian mission to provide and disseminate improved Sunday School

teaching and lesson materials, and by this and related means to advance and improve Christian education." Finding No. 24. Both of them are "devout Christians of the Evangelical Protestant Faith, and both of them developed a missionary zeal to promote and develop the effective teaching of the Bible in the Sunday School." Finding No. 32. Indeed, all of petitioner's members, officers, directors, and most of the employees were and are adherents of the evangelical theology of the Protestant faith. Finding No. 38. And all employees were and are required to be devout Christians, though not restricted to any particular denomination, and also otherwise qualified for the work performed. Finding No. 39. Daily worship and prayer meetings are held.

(4) Petitioner's articles of incorporation and by-laws provided that the purposes of the corporation were (a) the dissemination of the Gospel and the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities; (b) the organization and support of organizations, institutions, and movements exclusively devoted to Christian missionary, educational and other evangelical efforts; (c) the production, purchase, circulation, distribution and sale of Christian literature—including books, periodicals, pamphlets, tracts, placards, mottos and supplies; and (d) the conduct of publication and printing establishments. Finding Nos. 4 and 5.

(5) Petitioner's articles of incorporation were amended in 1954 to eliminate the organizational purpose of conducting a printing establishment (which petitioner had never done) and to elaborate and re-

state the corporate purposes. Included in the restatement was a provision for disposition of assets upon liquidation or dissolution to religious, charitable, scientific, literary or educational projects. Finding No. 6. Petitioner's printing and other work of a commercial nature are contracted out by petitioner to commercial concerns.

(6) After operating for eight years in accordance with the foregoing purposes, and accordingly exempt from taxation pursuant to the Commissioner's 1946 ruling, petitioner was advised in 1953 that its tax-exempt status was to be reconsidered "in view of recent changes in revenue legislation." Finding No. 17. Once again petitioner submitted to the Commissioner pertinent facts and data. In summarizing its activities, petitioner stated that it (a) prepared, published and distributed a variety of manuals, books, pamphlets, papers, magazines and supplies of all kinds for use in Sunday Schools and churches in about 52 Protestant denominations "for the purpose of aiding instruction in the Word of God", and (b) organized, supervised, aided in, and conducted institutes and conventions for training teachers in Christian Sunday Schools, Daily Vacation Bible Schools and other church schools. Finding No. 18.

(7) Petitioner's financial statements, as submitted to the Commissioner, revealed that at the close of the 1952 and 1953 fiscal years petitioner had total assets of $668,428.73 and $829,473.86, respectively. Its net sales of religious literature for those years totalled $1,675,819.59 and $1,964,520.60, respectively. Petitioner also advised the Commissioner that it had started a reserve toward the acquisition of a suitable building for its headquarters and had increased its

capital account to $400,000 for that purpose. Finding No. 19.

(8) As a result of his reconsideration, the Commissioner revoked his prior ruling and decreed that petitioner, commencing with the fiscal year ended January 31, 1953, would no longer be entitled to exempt status. In so ruling, he stated that "your primary activity in furtherance of your principal purpose is the publication and sale of religious publications, periodicals and supplies" and that, while such materials might be necessary to the carrying out of the religious functions of the purchasers, "the manufacture and supply thereof does not constitute a religious activity in itself but is *a business of a kind ordinarily carried on for profit.*" Finding No. 20; emphasis supplied. The Commissioner reaffirmed this ruling in 1954 and added: "Notwithstanding that the majority of the materials sold by you are prepared by members of your own staff as a result of their own research and creative endeavor, the preparation and sale thereof is not a religious activity within itself but is secular in nature. . . . Though you indicate that your organization does not have all the characteristics of the ordinary commercial publishing firm, in that you carry on activities other than publishing and selling which may be considered religious, it is shown that your primary activity consists of your publishing operations. *Since your primary activity consists of conducting a commercial enterprise*, as stated in our prior ruling, you cannot qualify for exemption." Finding No. 21; emphasis added.

(9) Additional facts submitted to the Commissioner and developed at the trial below revealed that petitioner has a board of directors, consisting now of seven prominent religious leaders, and that its affairs are primarily managed by an executive committee, com-

posed of petitioner's president, secretary and division heads. The five operating divisions are: (a) Editorial, creating most of petitioner's publications and editing all material published by it; (b) Dissemination, promoting sale of materials through mailing lists, distributing catalogs, advertising in religious magazines, and operating two religious bookstores; (c) Production, handling arrangements for the printing of petitioner's materials by outside printing companies, purchasing materials and supplies, and receiving and shipping orders; (d) Finance, handling all finances and accounting, and credits and collections; and (e) Personnel, handling employment and personnel matters. Finding No. 43.

(10) Within its Dissemination division, petitioner has an instructional department headed by an ordained minister. In 1957, alone, this department arranged and conducted some 244 conventions and seminars for ministers and workshops for Sunday School teachers at petitioner's headquarters building and at other locations throughout the nation. "The fundamental purposes of these activities are to stimulate the interest of Christian leaders and teachers in improved techniques and methods of Sunday School teaching, to train and instruct Sunday School teachers in such techniques and methods, and thereby to promote and improve the Sunday Schools and accomplish an effective teaching of the Bible to children." Finding No. 44. All of these conventions, seminars and workshops are provided by the petitioner without cost to the participants, and all materials employed by petitioner in connection with these instructional courses and sessions are supplied without cost.

(11) Petitioner's principal publications are the graduated Sunday School teaching and lesson mate-

rials known as the All Bible Grade Sunday School Lessons and the All Bible Vacation School Lessons. In addition, petitioner publishes a large number of religious pamphlets, booklets, and other supplemental teaching and lesson materials, and designs and provides various types of visual aids for teaching purposes. Finding No. 46. The chief editor and author of these materials has been Mrs. Cory. Finding No. 35.

(12) Approximately 94% of petitioner's sales are made directly to Sunday Schools throughout the country. About 26,000 Sunday Schools use petitioner's lesson materials and other items, representing 75 different Protestant denominations and more than 3,000,000 Sunday School pupils. Many thousands of pastors, ministers, Sunday School teachers and other religious leaders receive, free of charge, instructional training from petitioner's programs. Petitioner also makes substantial grants of lesson materials to newly formed Sunday Schools and other organizations unable to pay for such materials. Finding No. 47.

(13) About 85% of petitioner's total net sales, during the fiscal years from 1951 to 1957, represented petitioner's own productions of Sunday School teaching and lesson materials and supplemental publications and materials. The other 15% of the net sales related to books and merchandise purchased from others for resale, as to which petitioner realized little or no profit. Finding No. 48.

(14) By January 31, 1953, petitioner's balance of capital and surplus amounted to $744,798.26, all of which, except for its original capital of $30,710.11 transferred from Scripture Press, Inc., represented

retained earnings. Finding No. 51. Aside from $140,621.10 in Government bonds, this surplus was reflected principally in the asset values of accounts receivable and merchandise inventory, the former having increased from $22,343.94 in 1946 to $199,388.32 in 1953, and the latter from $71,607.98 in 1946 to $314,123.6 in 1953. Finding No. 51, Table III. The increases in these accounts resulted from the increase in sales from $640,794.60 in 1946 to $1,964,520.60 in 1953. Finding Nos. 13 and 18.

(15) Petitioner was found to have expended various sums, ranging from $21,835.67 in 1951 to $72,886.27 in 1957, for educational programs and instructional work at Sunday School meetings and conventions. Finding No. 49. These figures were on a non-accumulated annual basis and, due to an oversight by the Trial Commissioner, do not represent total expenditures for religious purposes. The evidence in the record shows that total expenditures for free religious instruction from 1951 through 1957 amounted to a total of $432,842.01, ranging from $24,717.67 in 1951 to $107,815.55 in 1957, instead of a total of $296,843.34.

(16) The capital and surplus item for the years 1951 to 1957 was found to have risen from $476,311.14 to $1,610,817.30. Finding No. 51. However, these figures were on an accumulated basis. All of these funds were accumulated for religious purposes, such as the erection of dormitories and related facilities for the free housing and care of ministers, Sunday School teachers and other church leaders attending seminars and other courses at petitioner's headquarters. Moreover, the entire accumulated surplus and capital are irrevocably dedicted to religious, educational, scientific or charitable projects and, on dissolution, the remain-

ing funds must go to such projects. Actually, the total annual additions to capital and surplus between 1951 and 1957 amounted to $1,293,586.03.

(17) During the 1951-1957 period, however, petitioner expended approximately $82,061 for cash donations, $141,230 for merchandise grants, and $432,842 for religious instruction—or a total of $656,133 in furtherance of its religious educational projects. Furthermore, since its headquarters building, costing over $1,000,000 and included in the accumulated surplus, is actually a part of petitioner's pursuit of its exempt purposes, the true total expended by petitioner for its exempt purposes is more than $1,656,000. That leaves some $590,000 remaining in surplus, which is likewise irrevocably dedicated to the pursuit of exempt purposes.

(18) Petitioner's headquarters building is not industrial or commercial in its construction but is designed to provide for religious educational objectives. In addition to facilities for publication and dissemination of religious literature, the building has a chapel seating 500, a prayer tower and a substantial number of classrooms. The building is used regularly for conducting the free conventions, seminars and workshops. Petitioner's employees hold their daily worship sessions in the chapel. Petitioner also contemplates adding, adjacent to its headquarters building, dormitories and related facilities for the free housing and care of those attending the conventions, seminars and workshops.

(19) The need for continued improvement in the training of Sunday School teachers and administrators was "abundantly shown in the record of this case." And it is "reasonably to conclude that plaintiff [peti-

tioner] has made a substantial contribution to the growth and development of the Sunday Schools in the United States." Finding No. 54. From the testimony of numerous religious leaders, it was made clear that petitioner is engaged in "the ministry of religious eduction." Finding No. 54.

(20) "The great majority of Sunday School lesson and teaching materials are published by denominational publishing houses, boards or other organized agencies of churches, and all of such publishing organizations are ruled tax-exempt by the Commissioner of Internal Revenue. All of such denominational publishing houses are controlled directly or indirectly by churches or church organizations. . . . There is no substantial evidence in this case that any commercial printing companies, operating as profit organizations, produce and sell Sunday School teaching and lesson materials comparable to those of plaintiff [petitioner], or engage in any religious educational programs." Finding No. 55.

Based upon the foregoing findings of fact, set forth in full in the appendix hereto, the Court of Claims concluded "that the sale of religious literature was the primary concern of plaintiff's activities. We further conclude that the sale of these materials, however religiously inspired, involved the plaintiff directly in the conduct of a trade or business for profit. * * * In summary, we are compelled to reach a conclusion that plaintiff's activities are of a nonexempt character. We find that the crucial factor, in the light of the evidence, is that the sales aspect of plaintiff's work looms so large as to overshadow all else."

## REASONS FOR GRANTING THE WRIT

As the court below noted, "There is unfortunately no case law on the point as to whether a religious publishing house, lacking denominational ties, merits tax exempt status." But in attempting to establish a precedent in this landmark case, the Court of Claims has utilized principles in direct conflict with the plain terms of the Internal Revenue Code and with the pertinent decisions of this Court and of other appellate tribunals. Confusion has thus been created as to the proper standards to be applied in determining whether a religious publishing organization is exempt from taxation by virtue of its religious or educational purposes. And the tax-exempt status heretofore enjoyed by innumerable religious and educational publishing ventures has been thrown into critical jeopardy. The invocation of this Court's review powers is thus both appropriate and essential.

### (A) The standards heretofore applied

Heretofore it has been clear that the focal point of any inquiry into the exempt status of a religious or educational organization was the existence of exclusively religious or eductional "purposes." Section 101(6) of the 1939 Code, in effect during the taxable year in question, and Section 501(c)(3) of the 1954 Code, applicable to all subsequent tax years, both provide in identical terms that nonprofit corporations "organized and operated exclusively for religious . . . or educational purposes" are exempt from income taxation. There is nothing in these statutory words indicating that an exemption is unavailable simply because the corporation engages in substantial or profitable publishing activity, so long as that activity is related to, or a part of, an exempt purpose.

Hence the relevant thrust of the statutory exemption is in terms of the religious or educational *purposes* of the organization and the dedication of its activities as well as the destination of its funds to these purposes. In dealing with identical language in an earlier tax statute (Act of Oct. 3, 1913, 38 Stat. 172, 180), this Court said in *Trinidad* v. *Sagrada Orden*, 263 U.S. 578, 581 (1924):

> "First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, *and yet have a net income. Next, it says nothing about the source of the income, but makes the destination the ultimate test of exemption.*
>
> "Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on with income received from properties dedicated to their pursuit. This is particularly true of many charitable, scientific and educational corporations and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted." [Emphasis added.]

*This statement has never been repudiated by this Court as the basic guideline to the religious-educational exemption.*

The purpose or destination test has been followed in pertinent Treasury Regulations[1] and by the decisions of this Court and other tribunals. Thus in *Better Business Bureau* v. *United States*, 326 U.S. 279, 283 (1945), in referring to identical language under the Social Security Act, the Court recognized this standard in its reference to the fact that "to fall within the claimed exemption, an organization must be *devoted to educational purposes* exclusively." [Emphasis supplied.] And in *Commissioner* v. *Orten*, 173 F. 2d 483, 486 (C.A. 6, 1949), the court said:

> "A business does not operate in vacuo—it is related to some objective. With the ordinary business men it is run for profit and the profit serves his need. Here the business . . . produced profits to be plowed back into furtherance of research and study."

Indeed, the Court of Claims itself has previously recognized the applicability of the destination test, stating in *Sico Company* v. *United States*, 121 Ct. Cls. 373, 389, 102 F. Supp. 197, 199 (1952):

> "It is sufficient to say that the great weight of authority on the question presented is to the effect that . . . the exemption from taxation granted by the statutes makes the destination of the income, that is, the purpose and object to which it is devoted, rather than its source, the ultimate test of its exemption."

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[1] Treas. Regs. § 1.501(c)(3)-1(c)(1) reads in pertinent part: "An organization may meet the requirements of § 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in § 513. In determining the existence or non-existence of such primary purpose, all the circumstances must be considered, including the size and extent of the activities which are in furtherance of one or more exempt purposes . . ."

Certain other statutory criteria are involved in evaluating the availability of this type of exemption. *While those criteria in some respects modify the destination concept, they do not destroy it or render it inapplicable to those organizations whose purposes are truly and exclusively exempt in nature.* Thus, as the *Better Business Bureau* case demonstrates, the exempt purpose or destination must be exclusive in nature; the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption. And if an otherwise exempt organization engages in a commercial business activity unrelated to its exempt purpose, that activity is subject to tax. Moreover, Congress has decreed that corporations engaged in activities ordinarily carried on by commercial concerns and in competition therewith are not exempt from taxation even though the profits are fed to other exempt corporations or used for otherwise exempt purposes.[2]

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[2] Thus Congress in 1950 amended the 1939 Code, by adding § 301(a) and (b) thereof, so as to provide that (1) a so-called "feeder corporation" operated for the primary purpose of carrying on a trade or business for profit shall not be exempt on the ground that its profits are payable to one or more exempt organizations, and (2) any portion of the income of an exempt organization derived from its conduct of a commercial trade or business shall be taxed—a tax known as "Supplement U"—at ordinary corporate rates.

In enacting these amendments, Congress clearly had in mind those organizations that in some manner are "in direct competition with other taxable businesses," imposing taxes so as to protect the latter businesses "against this unfair competitive situation." See S. Rep. No. 2375 (81st Cong., 2d Sess. 1950) and H. Rep. No. 871 (78th Cong., 1st Sess. 1942).

In the instant case, of course, the Court of Claims found (Finding No. 55) that there is no substantial evidence that any commercial printing companies operating for profit produce and sell Sunday School materials comparable to those of petitioner, or engage in any religious educational programs.

But where, as here, the organization is devoted exclusively to religious or educational purposes, where all of its activities are related to those purposes, and where no commercial competition is involved, the exemption as decreed by Congress is plainly available. Such was the accepted state of the law prior to the decision below.

**(B) The confused standards applied below**

The Court of Claims, in conflict with the destination concept and in contravention of its own findings, ignored the exclusively religious and educational nature of all of petitioner's activities. Instead it conceived the decisive issue to be whether the selling of religious literature was a primary or subordinate activity of petitioner. Having concluded that this activity was primary in nature,[3] the court further concluded "that the sale of these materials, however religiously inspired, involved the plaintiff [petitioner] directly in the conduct of a trade or business for profit."

The court thus held petitioner not entitled to a tax exemption despite the court's own findings that (1) the petitioner's business of preparing and selling Sunday School literature and materials to religious organizations is not one ordinarily carried on for profit, there being no competition in such activity from commercial

[3] The court's conclusion that the accumulated capital and surplus resulting from sales of religious literature "looms so large as to overshadow" the expenditures for instructional activities overlooks the facts of record demonstrating that such expenditures from 1951 to 1957 totalled some $1,656,000 (including the expenditure for cash donations, merchandise grants and the headquarters building). That leaves an accumulated surplus of only $590,000, which surplus is irrevocably dedicated to exempt purposes. See paragraph (17), p. 11, *supra*, of the Statement of the Case.

printing companies,[4] (2) all of the profits from such business, accumulated or spent, are devoted to the fundamental purpose of improving Sunday Schools by providing better teaching materials and by providing educational facilities for ministers, teachers and religious leaders, and (3) the petitioner has in fact made substantial contributions to the growth and development of Sunday Schools in the United States.

In the light of such factual findings, the mere fact that petitioner made profits, even substantial profits, from its publishing activity is not enough to deny exemption. Those findings make clear that the so-called primary activity—the preparation, publication and selling of religious literature for use in Sunday Schools and churches—involves matters closely associated with and indeed part of the demonstrated religious purposes of petitioner. And such activity does not involve petitioner in competition with ordinary commercial concerns. See *Forest Press, Inc.* v. *Commissioner*, 22 T.C. 265 (1954); *Saint Germain Foundation* v. *Commissioner*, 26 T.C. 648, 658 (1956). In these circumstances, the amount or primacy of the publishing and selling activities becomes irrelevant.

Thus, in a situation where selling activities have no commercial connotation and result only in expenditures and accumulations for religious purposes, the Court of Claims has repudiated the destination or purpose

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[4] The reference in footnote 11 of the court's opinion to the fact that many commercial concerns sell Bibles and other religious literature is irrelevant. Petitioner's sales were almost exclusively of a self-created Sunday School instruction nature of no attraction to the general public. Almost all of petitioner's sales were to Sunday Schools. Finding No. 47. Competition in such sales is solely from tax-exempt denominational publishing concerns. Finding No. 55.

test. In complete disregard of the fact that petitioner accumulates and spends nothing save for religious or educational purposes, the court has held those purposes meaningless for purposes of tax exemption. The result is to render it impossible for an organization like the petitioner to finance its exclusively religious purposes by engaging in non-commercially competitive publishing activities. The Court of Claims decision would force organizations such as petitioner to either donate or sell at a loss all of their publications. Such a result not only confuses and confounds the basic standard for applying § 101(6) of the 1939 Code and § 501(c)(3) of the 1954 Code but directly conflicts with the Congressional mandate as interpreted by this Court in the *Trinidad* case.

A restatement and clarification of that mandate therefore become appropriate. Not since the *Trinidad* decision was rendered some 37 years ago has this Court had occasion to consider this problem, and it has never done so with reference to the more recent Internal Revenue Codes. Nor has there ever been a definitive determination of the impact of the destination standard on religious publishing concerns, either of a denominational or non-denominational variety. The confusion created by the decision below ripens the need for such a determination.

**(C) The impact of the decision below**

A prime purpose of the Congressional desire to exempt from taxation those nonprofit corporations organized and operated exclusively for religious purposes was to aid religious publishing concerns such as petitioner. The exemption originated in § 38 of the Revenue Act of 1909, 36 Stat. 11, 112, and was introduced as a floor amendment in the Senate, 44 Cong. Rec. 4149.

The background and purpose of this provision were plainly stated by its author, Senator Bacon (44 Cong. Rec. 4151):

> "I will say to the Senator from Wyoming and to the Senate . . . that the corporation which I had particularly in mind as an illustration at the time I drew this amendment is the Methodist Book Concern, which has its headquarters in Nashville, which is a very large printing establishment, and in which there must necessarily be profit made, and there is a profit made exclusively for religious, benevolent, charitable, and educational purposes, in which no man receives a scintilla of individual profit."

As a result of this Congressional mandate, all of the denominational publishing houses in the United States have been ruled tax-exempt by the Commissioner of Internal Revenue.[5] See Finding No. 55. And all of them are engaged *primarily* in the business of creating, publishing and selling religious literature *at a profit* to their respective churches, church organizations and Sunday Schools. These publishing houses differ from petitioner mainly only in their control by, and relationship to, particular denominations—a factor of no statutory relevance to the availability of a tax exemption; nor do they carry on free religious instructional activities to the extent that petitioner does.

If the rationale of the Court of Claims be applied to these denominational publishing concerns, their tax-exempt status must be withdrawn. Ignoring the reli-

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[5] One of the largest of these is the Methodist Printing Home of Cincinnati, Ohio, the income of which supports the pension fund of Methodist ministers. Finding No. 55. The evidence of record shows that the sales and profit accumulations of many of the denominational concerns are equal to or substantially greater than petitioner's.

gious purpose to which their activities and funds are directed, so goes the reasoning, the primary activity of these corporations is the sale of religious literature for a profit—an activity which, "however religiously inspired, involved the . . . [denominational publishers] directly in the conduct of a trade or business for profit." Thus would the principal desired purpose of Congress in originally enacting the provision in question be frustrated. So serious a consequence, one that flies in the face of both the will and the language of the legislative draftsmen, certainly deserve the full consideration of this Court.

Moreover, the impact of the decision below does not stop with denominational publishing houses. For if non-denominational publishers such as the petitioner are to be denied exemption, then all other independent publishers devoted exclusively to educational, literary, and scientific purposes must likewise yield their present exemptions. Chief among these would be the National Geographic Society, organized in 1888 as an independent organization that performs the same type of operation in the science and geography field that petitioner does in the religious educational field.[6] The Society

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[6] The Trial Commissioner refused to admit evidence regarding the National Geographic Society and its tax-exempt status. See Petitioner's Exhibits 56(1)-(7). But all the proferred information is a matter of public record in the form of the Society's Annual Information Return on Form 990A, available each year for public inspection. Like petitioner, the Society is independent of any other organization, has a self-perpetuating board of directors (its members have no say in the management of the Society and dues paid by members are in reality solely for the subscription price of the magazine), accumulates substantial income from sales of publications (over $30,000,000 as of 1956), has constructed its own building from accumulated receipts, and has made a significant contribution within its specialized exempt field.

publishes and distributes to its members magazines and literature of a scientific nature and does so for a profit, all of which is accumulated or spent for scientific and educational purposes. For years it has been exempt under the same provisions of the Code as are involved in this case. Yet the ruling below places that exemption in grave jeopardy.

The serious consequences that can flow from an application of the decision below to many other nonprofit publishing corporations similar to the petitioner serve to underscore the importance of the question presented and the need for a definitive resolution thereof by this Court.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari to the Court of Claims should be granted.

Respectfully submitted,

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